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SAN DIEGO COUNTY, CA

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 SHUKRI SAKKAB, an individual, on
14 behalf of himself, and on behalf of all
15 persons similarly situated,

16
17 Plaintiff,

18 vs.

19 LUXOTTICA RETAIL NORTH
20 AMERICA INC., an Ohio Corporation;
21 and DOES 1 through 50 inclusive,

22 Defendants.
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Case No. 37-2012-00020743-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 510, 1194 AND
1198, *et seq.*;

3. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE §
226; and,

4. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE § 203.

DEMAND FOR A JURY TRIAL

CLASS ACTION COMPLAINT

-1-

1 Plaintiff Shukri Sakkab ("PLAINTIFF"), on behalf of himself and all other similarly
 2 situated current and former employees, alleges on information and belief, except for his own
 3 acts and knowledge, the following:

4
 5 **THE PARTIES**

6 1. Defendant Luxottica Retail North America Inc. ("LUXOTTICA" or
 7 "DEFENDANT") is an Ohio Corporation with its principal place of business located in
 8 Mason, Ohio. At all relevant times mentioned herein, LUXOTTICA conducted and
 9 continues to conduct substantial and regular business throughout California. LUXOTTICA
 10 conducts business under the business name Lenscrafters.

11 2. Established in 1983, LUXOTTICA was one of the first optical retailers to
 12 promise "eyeglasses in about an hour." Now, LUXOTTICA is one of North America's
 13 largest seller of eyewear and related services with over 950 stores in the U.S. and Canada.
 14 The company-owned stores, called Lenscrafters, sell prescription frames and sunglasses,
 15 contact lenses, and vision exams by on-site optometrists. LUXOTTICA is a nationwide
 16 optical chain with approximately 100 stores in California.

17 3. To successfully compete against the other optical retailers, LUXOTTICA
 18 substantially reduced labor costs by placing the burden of work on a smaller number of
 19 employees that were classified by LUXOTTICA as exempt from overtime wages. The goal
 20 of overtime laws includes expanding employment throughout the workforce by putting
 21 financial pressure on the employer and nurturing a stout job market, as well as the important
 22 public policy goal of protecting employees in a relatively weak bargaining position against
 23 the unfair scheme of uncompensated overtime work. An employer's obligation to pay its
 24 employees wages is more than a matter of private concern between the parties. That
 25 obligation is founded on a compelling public policy judgment that employees are entitled to
 26 work a livable number of hours at a livable wage. In addition, statutes and regulations that
 27 compel employers to pay overtime relate to fundamental issues of social welfare worthy of
 28 protection. The requirement to pay overtime wages extends beyond the benefits individual

1 workers receive because overtime wages discourage employers from concentrating work in a
2 few overburdened hands and encourage employers to instead hire additional employees.
3 Especially in today's economic climate, the importance of spreading available work to
4 reduce unemployment cannot be overestimated.

5 4. Plaintiff Shukri Sakkab resides in the County of San Diego and was employed
6 by LUXOTTICA as a General Manager at their Lenscrafters retail store at the Westfield
7 UTC Mall in San Diego, California and classified as exempt from overtime wages from
8 April of 2010 to November of 2011.

9 5. As part of their Lenscrafters retail business, LUXOTTICA employs a fleet of
10 so called "General Managers." The General Managers finite set of tasks was to greet
11 customers, handle customer requests and customer service complaints, conduct optical sales
12 in accordance with LUXOTTICA's company policies, take inventory, receive customers'
13 money in payment for their receipt of products or services provided by LUXOTTICA, and
14 act as information liaisons between LUXOTTICA's district managers and other employees
15 in their store. In performing these tasks PLAINTIFF and other General Managers were also
16 engaged in the related clerical paperwork tasks and reviewing daily, weekly, and monthly
17 sales goals.

18 6. The position of General Manager was represented by LUXOTTICA to the
19 PLAINTIFF and the other General Managers as a salaried position exempt from overtime
20 wages and other related benefits.

21 7. To perform their finite set of tasks, the General Managers did not engage in a
22 supervisory role given the constraints placed upon them by company policy. General
23 Managers did not determine what work was to be done by other employees or in what time
24 frame. Instead, the General Managers only retained a minor role in readjusting work
25 assignments in accordance with LUXOTTICA's strict, uniform corporate guidelines.
26 Furthermore, General Managers also had no role in training other employees or determining
27 what training they were to receive. Employees received their training through a CD-ROM
28 given to them by LUXOTTICA. The General Managers did not have the authority to hire,

1 fire, or promote other employees. General Managers could only do so upon receiving
2 approval from corporate employees and the human resources department of LUXOTTICA.
3 General Managers also did not have the authority to determine other employees' pay rates or
4 benefits, or give raises as they were unable to make employment-related, personnel decisions
5 without obtaining approval from the human resources department of LUXOTTICA.
6 Disciplinary decisions were made by the human resources department or dictated by
7 company policies. As a result, the General Managers were engaged in a type of work that
8 required no exercise of independent judgment or discretion as to any matter of significance.
9 Therefore, the PLAINTIFF and all the other General Managers were "managers" in name
10 only because they did not have managerial duties or authority and should therefore have
11 been properly classified as non-exempt employees.

12 8. Plaintiff Shukri Sakkab brings this Class Action on behalf of himself and a
13 California class, defined as all persons who are or previously were employed by Defendant
14 Luxottica Retail North America Inc. in California as a General Manager for a Lenscrafters
15 retail store and were classified as exempt from overtime wages (the "CALIFORNIA
16 CLASS") during the period beginning on the date four (4) years prior to the filing of this
17 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
18 PERIOD").

19 9. As defined by LUXOTTICA's comprehensive corporate policies and
20 procedures, the tasks that the PLAINTIFF and other CALIFORNIA CLASS Members
21 performed were the non-managerial tasks of greeting customers, handling customer requests
22 and customer service complaints, conducting optical sales in accordance with
23 LUXOTTICA's company policies, taking inventory, receiving customers' money in payment
24 for their receipt of products or services provided by LUXOTTICA, and acting as
25 information liaisons between LUXOTTICA's district managers and other employees in their
26 store in accordance with LUXOTTICA's established specific procedures and protocols
27 which governed and controlled every aspect of the work performed by the PLAINTIFF and
28 other CALIFORNIA CLASS Members. In performing these tasks PLAINTIFF and other

1 CALIFORNIA CLASS Members were also engaged in the related clerical paperwork tasks
2 and reviewing daily, weekly, and monthly sales goals. These standardized procedures mirror
3 the realities of the workplace evidencing a uniformity of work among the PLAINTIFF and
4 other CALIFORNIA CLASS Members and negated any exercise of independent judgment
5 and discretion as to any matter of significance.

6 10. The work schedule for the PLAINTIFF and other CALIFORNIA CLASS
7 Members was set by LUXOTTICA. Generally, the PLAINTIFF and other CALIFORNIA
8 CLASS Members worked ten (10) to twelve (12) hours each workday and ten (10) to twenty
9 (20) hours of overtime each workweek.

10 11. LUXOTTICA did not establish an alternative workweek election for
11 PLAINTIFF and other CALIFORNIA CLASS Members for ten (10) to twelve (12) hour
12 workdays.

13 12. PLAINTIFF and the other CALIFORNIA CLASS Members were not
14 provided with overtime compensation, were also not afforded their meal and/or rest breaks
15 and other benefits required by law as a result of being classified as "exempt" by
16 LUXOTTICA.

17 13. As a matter of company policy, practice, and procedure, LUXOTTICA has
18 uniformly, unlawfully, unfairly and/or deceptively classified every General Manager as
19 exempt based on job title alone, failed to pay the required overtime compensation and
20 otherwise failed to comply with all applicable labor laws with respect to these General
21 Managers.

22 14. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are
24 presently unknown to the PLAINTIFF who therefore sues these Defendants by such
25 fictitious names pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to
26 amend this Complaint to allege the true names and capacities of DOES 1 through 50,
27 inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon
28 that information and belief alleges, that the Defendants named in this Complaint, including

DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

15. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendants are legally attributable to the other Defendants and all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

16. The finite set of tasks required of the General Managers as defined by DEFENDANT were executed by the General Managers through the performance of non-exempt labor within a defined clerical skill set.

17. Although the PLAINTIFF and the other General Managers performed non-exempt tasks, DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these General Managers were classified as exempt from overtime compensation and related benefits. By reason of this uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the other General Managers who performed these non-exempt tasks, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF and the other General Managers and thereby failed to pay them overtime wages for documented overtime hours worked. The proper classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to pay all required overtime compensation for work performed by the members of the CALIFORNIA CLASS

1 and violated the California Labor Code and regulations promulgated thereunder as herein
2 alleged. In addition, DEFENDANT failed to provide all of the legally required meal and
3 rest breaks to the PLAINTIFF and the other CALIFORNIA CLASS Members as required by
4 the applicable Wage Order and Labor Code. During the CALIFORNIA CLASS PERIOD,
5 DEFENDANT did not have a policy or practice which provided meal and rest breaks to the
6 PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's
7 failure to provide the PLAINTIFF and the CALIFORNIA CLASS with all legally required
8 meal and rest breaks is evidenced by DEFENDANT's business records which contain no
9 record of these breaks.

10 18. DEFENDANT, as a matter of law, has the burden of proving that (a)
11 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies
12 with applicable laws.

13 19. During their employment with DEFENDANT, the PLAINTIFF and the other
14 CALIFORNIA CLASS Members, performed non-managerial, non-exempt tasks, but were
15 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more
16 than eight (8) hours in a workday, forty (40) hours in a workweek, and/or on the seventh
17 (7th) consecutive day of a workweek.

18 20. PLAINTIFF and the other General Managers employed by DEFENDANT
19 were not engaged in work of a type that was or now is directly related to the management or
20 general business operations of the employer's customers, when giving these words a fair but
21 narrow construction. PLAINTIFF and the other General Managers employed by
22 DEFENDANT were also not engaged in work of a type that was or now is performed at the
23 level of the policy or management of DEFENDANT. PLAINTIFF and the other General
24 Managers employed by DEFENDANT were also not engaged in work requiring knowledge
25 of an advanced type in a field or science or learning customarily acquired by a prolonged
26 course of specialized intellectual instruction and study, but rather their work involved the
27 performance of routine mental, clerical, and/or physical processes. PLAINTIFF and the
28 other General Managers employed by DEFENDANT were also not engaged in work that

1 was intellectual and varied in character, but rather was routine mental, clerical, and/or
2 physical work that was of such character that the output produced or the result accomplished
3 can be standardized in relation to a given period of time. The work of a General Manager of
4 DEFENDANT was work wherein the PLAINTIFF and the members of the CALIFORNIA
5 CLASS were engaged in the day-to-day business of DEFENDANT. The General Managers
6 performed the finite set of tasks of greeting customers, handling customer requests and
7 customer service complaints, conducting optical sales in accordance with DEFENDANT's
8 company policies, taking inventory, receiving customers' money in payment for their receipt
9 of products or services provided by DEFENDANT, and acting as information liaisons
10 between DEFENDANT's district managers and other employees in their store in accordance
11 with DEFENDANT's established specific procedures and protocols which governed and
12 controlled every aspect of the work performed by the PLAINTIFF and other CALIFORNIA
13 CLASS Members. In performing these tasks PLAINTIFF and other CALIFORNIA CLASS
14 Members were also engaged in the related clerical paperwork tasks and reviewing daily,
15 weekly, and monthly sales goals.

16 21. In performing these tasks, PLAINTIFF and other CALIFORNIA CLASS
17 Members followed procedures established by DEFENDANT. Specifically, DEFENDANT
18 set daily, weekly, and monthly sales goals that the PLAINTIFF and other General Managers
19 would follow when performing their finite set of tasks for DEFENDANT. The PLAINTIFF
20 and other CALIFORNIA CLASS Members did not set policies or establish procedures for
21 DEFENDANT and operated within the policy guidelines that were provided to them by
22 DEFENDANT. As a result, the PLAINTIFF and the other General Managers employed by
23 DEFENDANT were engaged in work that falls on the production or the non-exempt
24 administrative side of the administrative/production worker dichotomy and should have been
25 properly classified as non-exempt employees.

26 22. The work schedule for the PLAINTIFF and other CALIFORNIA CLASS
27 Members required them to work more than eight (8) hours in a workday and more than forty
28 (40) hours in a workweek.

1 23. General Managers were classified as exempt from California overtime and
2 related laws by DEFENDANT, however, these employees did not have managerial duties or
3 authority and were therefore managers in name only. General Managers performed these
4 ongoing day-to-day office and clerical activities because they had a very minor role in
5 supervising employees and had no authority to make employment-related decisions relating
6 to DEFENDANT's employees without first consulting DEFENDANT's district managers
7 and DEFENDANT's human resources department. Furthermore, the General Managers did
8 not exercise discretion or independent judgment as to matters of significance, and their job
9 duties were not directly related to DEFENDANT's management policies or general business
10 operation. At DEFENDANT's optical retail stores, DEFENDANT also employed retail
11 associates and retail managers that DEFENDANT classified as non-exempt employees and
12 paid overtime compensation for their overtime hours worked. The General Managers
13 employed by DEFENDANT have only some additional minor responsibilities in comparison
14 to the retail associates and retail managers employed by DEFENDANT that were paid on an
15 hourly basis and eligible to earn overtime pay for their overtime hours worked. The minor
16 work responsibilities General Managers performed in addition to the work performed by
17 other non-exempt retail associates and retail managers who were eligible for overtime
18 compensation, was readjusting work shifts for DEFENDANT's employees, interviewing
19 potential employees and closing DEFENDANT's store. These minor additional
20 responsibilities were performed in strict accordance with DEFENDANT's company policies
21 and procedures. General Managers spent a very small amount of their working time
22 engaging in these tasks, but rather spent the vast majority of their time performing the non-
23 exempt and non-managerial finite set of tasks that focused on performing the same day-to-
24 day activities of DEFENDANT's non-exempt employees.

25 24. PLAINTIFF and all members of the CALIFORNIA CLASS are and were
26 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
27 thereafter, DEFENDANT failed to take the proper steps to determine whether the
28 PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified under

1 the applicable Industrial Welfare Commission Wage Order (Wage Order 4-2001) and Cal.
2 Lab. Code §§ 510, *et seq.* as exempt from applicable California labor laws. Since
3 DEFENDANT affirmatively and wilfully misclassified the PLAINTIFF and the members of
4 the CALIFORNIA CLASS in compliance with California labor laws, DEFENDANT's
5 practices violated and continue to violate California law. In addition, DEFENDANT acted
6 deceptively by falsely and fraudulently telling the PLAINTIFF and each member of the
7 CALIFORNIA CLASS that they were exempt from overtime pay when DEFENDANT
8 knew or should have known that this statement was false and not based on known facts.
9 DEFENDANT also acted unfairly by violating the California labor laws, and as a result of
10 this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT
11 cheated the competition by paying the CALIFORNIA CLASS less than the amount
12 competitors paid who complied with the law and cheated the CALIFORNIA CLASS by not
13 paying them in accordance with California law.

14 25. DEFENDANT also failed to provide and still fails to provide the PLAINTIFF
15 and the other CALIFORNIA CLASS Members with a wage statement in writing that
16 accurately sets forth gross wages earned, all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate by the
18 PLAINTIFF and the other CALIFORNIA CLASS Members. This conduct violated
19 California Labor Code § 226. The pay stub also did not accurately display anywhere the
20 PLAINTIFF's and the other CALIFORNIA CLASS Members' overtime hours and
21 applicable rates of overtime pay for the pay period.

22 26. By reason of this uniform conduct applicable to the PLAINTIFF and all the
23 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
24 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
25 (the "UCL"), by engaging in a uniform company-wide policy and procedure which failed to
26 correctly classify the PLAINTIFF and the CALIFORNIA CLASS of General Managers as
27 non-exempt. The proper classification of these employees is DEFENDANT's burden. As a
28 result of DEFENDANT's intentional disregard of the obligation to meet this burden,

1 DEFENDANT failed to properly calculate and/or pay all required overtime compensation
2 for work performed by the members of the CALIFORNIA CLASS and violated the
3 applicable Wage Order, the California Labor Code and the regulations promulgated
4 thereunder as herein alleged.

5 27. Plaintiff Shukri Sakkab worked as a General Manager for DEFENDANT and
6 was classified as an exempt employee from April of 2010 to November of 2011.
7 PLAINTIFF performed the finite set of tasks of greeting customers, handling customer
8 requests and customer service complaints, conducting optical sales in accordance with
9 DEFENDANT's company policies, taking inventory, receiving customers' money in
10 payment for their receipt of products or services provided by DEFENDANT, and acting as
11 an information liaison between DEFENDANT's district managers and other employees in
12 his store. In addition, the PLAINTIFF also performed related clerical tasks, paperwork, and
13 reviewed daily, weekly, and monthly sales goals in accordance with DEFENDANT's
14 policies. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was permitted no
15 discretion in his duties because DEFENDANT's district managers' directives controlled
16 virtually every aspect of the store's day-to-day operations, including but not limited to, the
17 days and hours of store operations; power to change store hours; store layouts and changes
18 to store layouts; selection, presentation, and pricing of merchandise, and payroll budgets
19 leaving PLAINTIFF no choice in how to manage the store. During the CALIFORNIA
20 CLASS PERIOD, PLAINTIFF as a General Manager, was classified by DEFENDANT as
21 exempt from overtime pay and worked in excess of eight (8) hours in a workday and more
22 than forty (40) hours in a workweek, but as a result of DEFENDANT's misclassification of
23 PLAINTIFF as exempt from the applicable California Labor Code provisions, PLAINTIFF
24 was not compensated by DEFENDANT for his overtime hours worked at the applicable
25 overtime rate and DEFENDANT also failed to provide PLAINTIFF with his meal and rest
26 breaks. In addition, PLAINTIFF was not provided with accurate and itemized wage
27 statements showing the gross wages earned, the net wages earned, all applicable hourly rates
28 in effect during the pay period, including overtime hourly rates, and the corresponding

1 number of hours worked at each hourly rate, by DEFENDANT during the CALIFORNIA
 2 CLASS PERIOD in violation of Cal. Lab. Code 226(a). To date, DEFENDANT has not
 3 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages
 4 owed to him under Labor Code Section 203.

5 THE CALIFORNIA CLASS

6 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
 7 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
 8 "UCL") as a Class Action, pursuant to California Code of Civil Procedure Section 382, on
 9 behalf of a California Class, defined as all persons who are or previously were employed by
 10 Defendant Luxottica Retail North America Inc. in California as a General Manager for a
 11 Lenscrafters retail store and were classified as exempt from overtime wages (the
 12 "CALIFORNIA CLASS") during the period beginning on the date four (4) years prior to the
 13 filing of this Complaint and ending on the date as determined by the Court (the
 14 "CALIFORNIA CLASS PERIOD").

15 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA
 16 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
 17 accordingly.

18 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
 19 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
 20 Order Requirements, and the applicable provisions of California law, intentionally,
 21 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly, unfairly,
 22 unlawfully, and deceptively instituted a practice to ensure that the employees employed in a
 23 General Manager position were not properly classified as non-exempt from the requirements
 24 of California Labor Code §§ 510, *et seq.*

25 31. DEFENDANT has the burden of proof to make sure that each and every
 26 employee is properly classified as exempt from the requirements of the Cal. Lab. Code §§
 27 510, *et seq.* DEFENDANT, however, as a matter of uniform and systematic policy and
 28

1 procedure had in place during the CALIFORNIA CLASS PERIOD and still has in place a
2 policy and practice that misclassifies the CALIFORNIA CLASS Members as exempt.
3 DEFENDANT's uniform policy and practice in place at all times during the CALIFORNIA
4 CLASS PERIOD and currently in place is to systematically classify each and every
5 CALIFORNIA CLASS Member as exempt from the requirements of the California Labor
6 Code §§ 510, *et seq.* This common business practice applicable to each and every
7 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,
8 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the
9 "UCL") as causation, damages, and reliance are not elements of this claim.

10 32. At no time before, during or after the PLAINTIFF's employment with
11 DEFENDANT was any General Manager reclassified as non-exempt from the applicable
12 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS
13 Member was initially, uniformly, and systematically classified as exempt upon being hired.

14 33. Any individual declarations of any employees offered at this time purporting
15 to indicate that one or more General Managers may have been properly classified is of no
16 force or affect absent contemporaneous evidence that DEFENDANT's uniform system did
17 not misclassify the PLAINTIFF and the other CALIFORNIA CLASS Members as exempt
18 pursuant to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,
19 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
20 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,
21 the PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel
22 DEFENDANT to provide restitutionary disgorgement of their ill-gotten gains into a fluid
23 fund in order to restitute these funds to the PLAINTIFF and the CALIFORNIA CLASS
24 Members according to proof.

25 34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
26 CLASS Members is impracticable.

27 35. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
28 under California law by:

- 1 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
3 deceptively having in place company policies, practices and procedures
4 that uniformly misclassified the PLAINTIFF and the members of the
5 CALIFORNIA CLASS as exempt;
- 6 (b) Committing an act of unfair competition in violation of the UCL, by
7 unlawfully, unfairly, and/or deceptively failing to have in place a
8 company policy, practice and procedure that accurately determined the
9 amount of working time spent by the PLAINTIFF and the members of
10 the CALIFORNIA CLASS performing non-exempt labor;
- 11 (c) Committing an act of unfair competition in violation of the UCL, by
12 having in place a company policy, practice and procedure that failed to
13 reclassify as non-exempt those members of the CALIFORNIA CLASS
14 whose actual tasks were comprised of non-exempt job functions;
- 15 (d) Committing an act of unfair competition in violation of the UCL, by
16 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
17 overtime pay to the PLAINTIFF and the members of the
18 CALIFORNIA CLASS who were improperly classified as exempt, and
19 retaining the unpaid overtime to the benefit of DEFENDANT;
- 20 (e) Committing an act of unfair competition in violation of the UCL, by
21 violating Cal. Lab. Code § 226.7, by failing to provide all mandatory
22 meal and/or rest periods to the PLAINTIFF and the CALIFORNIA
23 CLASS Members;
- 24 (f) Committing an act of unfair competition in violation of the UCL, by
25 violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF
26 and the members of the CALIFORNIA CLASS with an accurate
27 itemized statement in writing showing the gross wages earned, the net
28 wages earned, all applicable hourly rates in effect during the pay period

1 and the corresponding number of hours worked at each hourly rate by
2 the employee; and,

- 3 (g) Committing an act of unfair competition in violation of the UCL by
4 violating Cal. Lab. Code § 203 by failing to provide restitution of
5 wages owed to PLAINTIFF and members of the CALIFORNIA
6 CLASS who were improperly classified as exempt and who have
7 terminated their employment.

8 36. This Class Action meets the statutory prerequisites for the maintenance of a
9 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition
12 of their claims as a class will benefit the parties and the Court;
13 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
14 raised in this Complaint are common to the CALIFORNIA CLASS will
15 apply uniformly to every member of the CALIFORNIA CLASS;
16 (c) The claims of the representative PLAINTIFF are typical of the claims
17 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
18 the other members of the CALIFORNIA CLASS, was initially
19 classified as exempt upon hiring based on the defined corporate policies
20 and practices and labored under DEFENDANT's systematic procedure
21 that failed to properly classify as non-exempt the PLAINTIFF and the
22 members of the CALIFORNIA CLASS. PLAINTIFF sustained
23 economic injury as a result of DEFENDANT's employment practices.
24 PLAINTIFF and the members of the CALIFORNIA CLASS were and
25 are similarly or identically harmed by the same unlawful, deceptive,
26 unfair and pervasive pattern of misconduct engaged in by
27 DEFENDANT by deceptively advising all General Managers that they
28 were exempt from overtime wages based on the defined corporate

1 policies and practices, and unfairly failing to pay overtime to these
 2 employees who were improperly classified as exempt; and,

- 3 (d) The representative PLAINTIFF will fairly and adequately represent and
 4 protect the interest of the CALIFORNIA CLASS, and has retained
 5 counsel who are competent and experienced in Class Action litigation.
 6 There are no material conflicts between the claims of the representative
 7 PLAINTIFF and the members of the CALIFORNIA CLASS that would
 8 make class certification inappropriate. Counsel for the CALIFORNIA
 9 CLASS will vigorously assert the claims of all employees in the
 10 CALIFORNIA CLASS.

11 37. In addition to meeting the statutory prerequisites to a Class Action, this Action
 12 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) Without class certification and determination of declaratory, statutory
 14 and other legal questions within the class format, prosecution of
 15 separate actions by individual members of the CALIFORNIA CLASS
 16 will create the risk of:
- 17 1) Inconsistent or varying adjudications with respect to individual
 18 members of the CALIFORNIA CLASS which would establish
 19 incompatible standards of conduct for the parties opposing the
 20 CALIFORNIA CLASS; and/or,
 - 21 2) Adjudication with respect to individual members of the
 22 CALIFORNIA CLASS which would as a practical matter be
 23 dispositive of interests of the other members not party to the
 24 adjudication or substantially impair or impede their ability to
 25 protect their interests.
- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
 27 to act on grounds generally applicable to the CALIFORNIA CLASS,
 28 making appropriate class-wide relief with respect to the CALIFORNIA

1 CLASS as a whole in that DEFENDANT uniformly classified and
 2 treated the General Managers as exempt and, thereafter, uniformly
 3 failed to take proper steps to determine whether the General Managers
 4 were properly classified as exempt, and thereby denied these employees
 5 overtime wages as required by law;

6 1) With respect to the First Cause of Action, the final relief on
 7 behalf of the CALIFORNIA CLASS sought does not relate
 8 exclusively to restitution because through this claim the
 9 PLAINTIFF seeks declaratory relief holding that
 10 DEFENDANT's policy and practices constitute unfair
 11 competition, along with incidental equitable relief as may be
 12 necessary to remedy the conduct declared to constitute unfair
 13 competition;

14 (c) Common questions of law and fact exist as to the members of the
 15 CALIFORNIA CLASS, with respect to the practices and violations of
 16 California law as listed above, and predominate over any question
 17 affecting only individual CALIFORNIA CLASS Members, and a Class
 18 Action is superior to other available methods for the fair and efficient
 19 adjudication of the controversy, including consideration of:

- 20 1) The interests of the members of the CALIFORNIA CLASS in
 21 individually controlling the prosecution or defense of separate
 22 actions in that the substantial expense of individual actions will
 23 be avoided to recover the relatively small amount of economic
 24 losses sustained by the individual CALIFORNIA CLASS
 25 Members when compared to the substantial expense and burden
 26 of individual prosecution of this litigation;
 27 2) Class certification will obviate the need for unduly duplicative
 28 litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to
 2 individual members of the CALIFORNIA CLASS, which
 3 would establish incompatible standards of conduct for
 4 DEFENDANT; and/or,

5 B. Adjudications with respect to individual members of the
 6 CALIFORNIA CLASS would as a practical matter be
 7 dispositive of the interests of the other members not
 8 parties to the adjudication or substantially impair or
 9 impede their ability to protect their interests;

10 3) In the context of wage litigation because as a practical matter a
 11 substantial number of individual CALIFORNIA CLASS
 12 Members will avoid asserting their legal rights out of fear of
 13 retaliation by DEFENDANT, which may adversely affect an
 14 individual's job with DEFENDANT or with a subsequent
 15 employer, the Class Action is the only means to assert their
 16 claims through a representative; and,

17 4) A Class Action is superior to other available methods for the fair
 18 and efficient adjudication of this litigation because class
 19 treatment will obviate the need for unduly and unnecessary
 20 duplicative litigation that is likely to result in the absence of
 21 certification of this Action pursuant to Cal. Code of Civ. Proc. §
 22 382.

23 38. This Court should permit this Action to be maintained as a Class Action
 24 pursuant to Cal. Code of Civ. Proc. § 382, because:

25 (a) The questions of law and fact common to the CALIFORNIA CLASS
 26 predominate over any question affecting only individual CALIFORNIA
 27 CLASS Members because DEFENDANT's employment practices were
 28 uniform and systematically applied with respect to the CALIFORNIA

1 CLASS;

- 2 (b) A Class Action is superior to any other available method for the fair
3 and efficient adjudication of the claims of the members of the
4 CALIFORNIA CLASS because in the context of employment litigation
5 a substantial number of individual CALIFORNIA CLASS Members
6 will avoid asserting their rights individually out of fear of retaliation or
7 adverse impact on their employment;
- 8 (c) The members of the CALIFORNIA CLASS are so numerous that it is
9 impractical to bring all members of the CALIFORNIA CLASS before
10 the Court;
- 11 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
12 be able to obtain effective and economic legal redress unless the action
13 is maintained as a Class Action;
- 14 (e) There is a community of interest in obtaining appropriate legal and
15 equitable relief for the acts of unfair competition, statutory violations
16 and other improprieties, and in obtaining adequate compensation for the
17 injuries which DEFENDANT's actions have inflicted upon the
18 CALIFORNIA CLASS;
- 19 (f) There is a community of interest in ensuring that the combined assets of
20 DEFENDANT are sufficient to adequately compensate the members of
21 the CALIFORNIA CLASS for the injuries sustained;
- 22 (g) DEFENDANT has acted or refused to act on grounds generally
23 applicable to the CALIFORNIA CLASS, thereby making final class-
24 wide relief appropriate with respect to the CALIFORNIA CLASS as a
25 whole;
- 26 (h) The members of the CALIFORNIA CLASS are readily ascertainable
27 from the business records of DEFENDANT. The CALIFORNIA
28 CLASS consists of all DEFENDANT's General Managers who were

1 classified as exempt and who were employed in California during the
2 CALIFORNIA CLASS PERIOD; and,

- 3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring an efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT as to
6 the members of the CALIFORNIA CLASS.

7 39. DEFENDANT maintains records from which the Court can ascertain and
8 identify by name and job title, each of DEFENDANT's employees who have been
9 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,
10 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
11 Complaint to include any additional job titles of similarly situated employees when they
12 have been identified.

13 THE CALIFORNIA LABOR SUB-CLASS

14 40. PLAINTIFF further brings the Second, Third, and Fourth Causes of Action on
15 behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
16 were employed by Defendant Luxottica Retail North America Inc. in California (the
17 "CALIFORNIA LABOR SUB-CLASS") during the period beginning on the date three (3)
18 years prior to the filing of the action and ending on the date as determined by the Court (the
19 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil
20 Procedure § 382.

21 41. DEFENDANT, as a matter of corporate policy, practice and procedure,
22 and in violation of the applicable California Labor Code ("Labor Code"), and Industrial
23 Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,
24 and systematically misclassified the PLAINTIFF and the other members of the
25 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from
26 overtime wages and other labor laws based on DEFENDANT's comprehensive policies and
27 procedures in order to avoid the payment of overtime wages by misclassifying their positions
28

1 as exempt from overtime wages and other labor laws. To the extent equitable tolling
 2 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT,
 3 the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

4 42. DEFENDANT maintains records from which the Court can ascertain and
 5 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR
 6 SUB-CLASS Members have been systematically, intentionally and uniformly misclassified
 7 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.
 8 PLAINTIFF will seek leave to amend the Complaint to include these additional job titles
 9 when they have been identified.

10 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
 11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

12 44. Common questions of law and fact exist as to members of the CALIFORNIA
 13 LABOR SUB-CLASS, including, but not limited, to the following:

- 14 (a) Whether DEFENDANT unlawfully failed to pay overtime
 15 compensation to members of the CALIFORNIA LABOR SUB-CLASS
 16 in violation of the California Labor Code and California regulations and
 17 the applicable California Wage Order;
- 18 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
 19 non-exempt employees entitled to overtime compensation for overtime
 20 hours worked under the overtime pay requirements of California law;
- 21 (c) Whether DEFENDANT's policy and practice of classifying the
 22 CALIFORNIA LABOR SUB-CLASS Members as exempt from
 23 overtime compensation and failing to pay the CALIFORNIA LABOR
 24 SUB-CLASS Members overtime violate applicable provisions of
 25 California law;
- 26 (d) Whether DEFENDANT unlawfully failed to keep and furnish
 27 CALIFORNIA LABOR SUB-CLASS Members with accurate records
 28 of overtime hours worked;

(e) Whether DEFENDANT's policy and practice of failing to pay members of the CALIFORNIA LABOR SUB-CLASS all wages when due within the time required by law after their employment ended violates California law; and,

(f) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS.

45. DEFENDANT, as a matter of corporate policy, practice and procedure, erroneously classified all General Managers as exempt from overtime wages and other labor laws. All General Managers, including the PLAINTIFF, performed the same finite set of tasks and were paid by DEFENDANT according to uniform and systematic company procedures, which, as alleged herein above, failed to correctly pay overtime compensation. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing to pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for a workday longer than eight (8) hours, a workweek longer than forty (40) hours, and/or all hours worked on the seventh (7th) consecutive day of a workweek for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as exempt with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

employee; and,

- (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

47. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was improperly classified as exempt and denied overtime pay as a result of DEFENDANT's systematic classification practices. PLAINTIFF and all the other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and

1 has retained counsel who are competent and experienced in Class
 2 Action litigation. There are no material conflicts between the claims of
 3 the representative PLAINTIFF and the members of the CALIFORNIA
 4 LABOR SUB-CLASS that would make class certification
 5 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
 6 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
 7 CLASS Members.

8 48. In addition to meeting the statutory prerequisites to a Class Action, this Action
 9 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) Without class certification and determination of declaratory, statutory
 11 and other legal questions within the class format, prosecution of
 12 separate actions by individual members of the CALIFORNIA LABOR
 13 SUB-CLASS will create the risk of:
- 14 1) Inconsistent or varying adjudications with respect to individual
 15 members of the CALIFORNIA LABOR SUB-CLASS which
 16 would establish incompatible standards of conduct for the parties
 17 opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 18 2) Adjudication with respect to individual members of the
 19 CALIFORNIA LABOR SUB-CLASS which would as a
 20 practical matter be dispositive of interests of the other members
 21 not party to the adjudication or substantially impair or impede
 22 their ability to protect their interests.
- 23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
 24 acted or refused to act on grounds generally applicable to the
 25 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
 26 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
 27 whole in that DEFENDANT uniformly classified and treated the
 28 General Managers as exempt and, thereafter, uniformly failed to take

1 proper steps to determine whether the General Managers were properly
2 classified as exempt, and thereby denied these employees overtime
3 wages as required by law;

4 (c) Common questions of law and fact predominate as to the members of
5 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
6 and violations of California law as listed above, and predominate over
7 any question affecting only individual CALIFORNIA LABOR SUB-
8 CLASS Members, and a Class Action is superior to other available
9 methods for the fair and efficient adjudication of the controversy,
10 including consideration of:

11 1) The interests of the members of the CALIFORNIA LABOR
12 SUB-CLASS in individually controlling the prosecution or
13 defense of separate actions in that the substantial expense of
14 individual actions will be avoided to recover the relatively small
15 amount of economic losses sustained by the individual
16 CALIFORNIA LABOR SUB-CLASS Members when compared
17 to the substantial expense and burden of individual prosecution
18 of this litigation;

19 2) Class certification will obviate the need for unduly duplicative
20 litigation that would create the risk of:

21 A. Inconsistent or varying adjudications with respect to
22 individual members of the CALIFORNIA LABOR SUB-
23 CLASS, which would establish incompatible standards of
24 conduct for DEFENDANT; and/or,

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a
27 practical matter be dispositive of the interests of the other
28 members not parties to the adjudication or substantially

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

49. This Court should permit this Action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, because:

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

CLASS ACTION COMPLAINT

- 1 CALIFORNIA LABOR SUB-CLASS before the Court;
- 2 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
- 3 Members, will not be able to obtain effective and economic legal
- 4 redress unless the action is maintained as a Class Action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
- 6 equitable relief for the acts of unfair competition, statutory violations
- 7 and other improprieties, and in obtaining adequate compensation for the
- 8 damages and injuries which DEFENDANT's actions have inflicted
- 9 upon the CALIFORNIA LABOR SUB-CLASS;
- 10 (f) There is a community of interest in ensuring that the combined assets of
- 11 DEFENDANT are sufficient to adequately compensate the members of
- 12 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 13 (g) DEFENDANT has acted or refused to act on grounds generally
- 14 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
- 15 making final class-wide relief appropriate with respect to the
- 16 CALIFORNIA LABOR SUB-CLASS as a whole;
- 17 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
- 18 ascertainable from the business records of DEFENDANT. The
- 19 CALIFORNIA LABOR SUB-CLASS consists of CALIFORNIA
- 20 CLASS Members who were employed by DEFENDANT in California
- 21 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 22 (i) Class treatment provides manageable judicial treatment calculated to
- 23 bring a efficient and rapid conclusion to all litigation of all wage and
- 24 hour related claims arising out of the conduct of DEFENDANT.

25 JURISDICTION AND VENUE

26

27 50. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §

28 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action

1 on behalf of similarly situated employees of Defendant Luxottica Retail North America Inc.
 2 pursuant to Cal. Code of Civ. Proc. § 382.

3 51. Venue is proper in this Court pursuant to California Code of Civil Procedure,
 4 Sections 395 and 395.5, because PLAINTIFF resides in this County and DEFENDANT (i)
 5 currently maintains and at all relevant times maintained offices and facilities in this County
 6 and/or conducts substantial business in this County, and (ii) committed the wrongful conduct
 7 herein alleged in this County against members of the CALIFORNIA CLASS and
 8 CALIFORNIA LABOR SUB-CLASS.

9
 10 **FIRST CAUSE OF ACTION**

11 **For Unlawful Business Practices**

12 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

13 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

14 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
 15 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 51
 16 of this Complaint.

17 53. DEFENDANT is a "person" as that term is defined under Cal. Bus. and
 18 Prof. Code § 17021.

19 54. California Business & Professions Code §§ 17200, *et seq.* (the "UCL")
 20 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
 21 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
 22 unfair competition as follows:

23 Any person who engages, has engaged, or proposes to engage in
 24 unfair competition may be enjoined in any court of competent
 25 jurisdiction. The court may make such orders or judgments, including
 26 the appointment of a receiver, as may be necessary to prevent the use
 27 or employment by any person of any practice which constitutes unfair
 28 competition, as defined in this chapter, or as may be necessary to
 restore to any person in interest any money or property, real or
 personal, which may have been acquired by means of such unfair
 competition.

California Business & Professions Code § 17203.

55. By the conduct alleged herein, DEFENDANT has engaged and continues to

1 engage in a business practice which violates California law, including but not limited to,
2 Wage Order 4-2001, the California Code of Regulations, and the California Labor Code
3 Sections 201, 202, 203, 226(a), 226.7, 510, 1194 & 1198, and for which this Court should
4 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
5 may be necessary to prevent and remedy the conduct held to constitute unfair competition,
6 including restitution of wages wrongfully withheld.

7 56. By the conduct alleged herein, DEFENDANT's practices were unlawful and
8 unfair in that these practices violate public policy, are immoral, unethical, oppressive,
9 unscrupulous or substantially injurious to employees, and are without valid justification or
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section
11 17203 of the California Business & Professions Code, including restitution of wages
12 wrongfully withheld.

13 57. Throughout the CALIFORNIA CLASS PERIOD, it was also DEFENDANT's
14 uniform policy and practice to not provide all legally required meal and rest breaks to the
15 PLAINTIFF and the CALIFORNIA CLASS Members. DEFENDANT's uniform practice
16 required the PLAINTIFF and the CALIFORNIA CLASS Members to work continuously
17 throughout the workday without being supplied all meal and/or rest breaks in accordance
18 with the number of hours they worked. At all relevant times during the CALIFORNIA
19 CLASS PERIOD, DEFENDANT failed to provide any compensated work time for failing to
20 provide such breaks to the PLAINTIFF and the CALIFORNIA CLASS Members.

21 58. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of
22 each member of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which
23 a meal period was not timely provided for each five (5) hours of work, and/or one (1) hour
24 of pay for each workday in which a second meal period was not timely provided for each ten
25 (10) hours of work.

26 59. PLAINTIFF further demands on behalf of himself and on behalf of each
27 member of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest
28 period was not timely provided as required by law.

1 60. By the conduct alleged herein, DEFENDANT's practices were deceptive and
2 fraudulent in that DEFENDANT's uniform policy and practice was to represent to
3 PLAINTIFF and other CALIFORNIA CLASS Members that they were exempt from
4 overtime pay when in fact these representations were false and likely to deceive, for which
5 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
6 17203, including restitution of wages wrongfully withheld.

7 61. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF
9 and the other members of the CALIFORNIA CLASS to be underpaid during their
10 employment with DEFENDANT.

11 62. By and through the unlawful and unfair business practices described herein,
12 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF
13 and the other members of the CALIFORNIA CLASS and has deprived them of valuable
14 rights and benefits guaranteed by law and contract, all to the detriment of these employees
15 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete
16 against competitors who comply with the law.

17 63. All the acts described herein as violations of, among other things, the
18 California Labor Code, California Code of Regulations, the Industrial Welfare Commission
19 Wage Orders, are unlawful, are in violation of public policy, are immoral, unethical,
20 oppressive, and unscrupulous, and are likely to deceive employees, as herein alleged, and
21 thereby constitute deceptive, unfair and unlawful business practices in violation of Cal. Bus.
22 and Prof. Code §§ 17200, *et seq.*

23 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
24 to, and do, seek such relief as may be necessary to restore to them the money and property
25 which DEFENDANT has acquired, or of which the PLAINTIFF and the other members of
26 the CALIFORNIA CLASS have been deprived, by means of the above described unlawful
27 and unfair business practices, including earned but unpaid overtime wages for all overtime
28 hours worked.

1 65. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful,
3 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
4 from engaging in any unlawful and unfair business practices in the future.

5 66. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
6 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
7 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
8 unabated. As a result of the unlawful and unfair business practices described herein, the
9 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
10 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
11 from continuing to engage in these unlawful and unfair business practices.

12 13 SECOND CAUSE OF ACTION

14 For Failure To Pay Overtime Compensation

15 [Cal. Lab. Code §§ 510, 1194 and 1198]

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

18 67. PLAINTIFF, and the other members of the CALIFORNIA LABOR
19 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,
20 paragraphs 1 through 66 of this Complaint.

21 68. Cal. Lab. Code § 510 states in relevant part:

22 Eight hours of labor constitutes a day's work. Any work in excess of
23 eight hours in one workday and any work in excess of 40 hours in any
24 one workweek and the first eight hours worked on the seventh day of
25 work in any one workweek shall be compensated at the rate of no less
26 than one and one-half times the regular rate of pay for an employee.
27 Any work in excess of 12 hours in one day shall be compensated at the
28 rate of no less than twice the regular rate of pay for an employee. In
29 addition, any work in excess of eight hours on any seventh day of a
30 workweek shall be compensated at the rate of no less than twice the
31 regular rate of pay of an employee.

32 69. Cal. Lab. Code § 551 states that, "Every person employed in any occupation
of labor is entitled to one day's rest therefrom in seven."

1 70. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his
2 employees to work more than six days in seven."

3 71. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the
4 overtime rate of compensation required to be paid to a nonexempt full-time salaried
5 employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly
6 salary."

7 72. Cal. Lab. Code § 1194 states:

8 Notwithstanding any agreement to work for a lesser wage, any
9 employee receiving less than the legal minimum wage or the legal
10 overtime compensation applicable to the employee is entitled to recover
11 in a civil action the unpaid balance of the full amount of this minimum
12 wage or overtime compensation, including interest thereon, reasonable
13 attorney's fees, and costs of suit.

14 73. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the
15 standard conditions of labor fixed by the commission shall be the maximum hours of work
16 and the standard conditions of labor for employees. The employment of any employee for
17 longer hours than those fixed by the order or under conditions of labor prohibited by the
18 order is unlawful."

19 74. DEFENDANT has intentionally and uniformly designated certain employees
20 as "exempt" employees, by their job title alone and without regard to DEFENDANT's
21 realistic expectations and actual overall requirements of the job, including the PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS who worked on the
23 production and non-managerial side of DEFENDANT's business. This was done in an
24 illegal attempt to avoid payment of overtime wages and other benefits in violation of the
25 Cal. Lab. Code and Industrial Welfare Commission requirements.

26 75. For an employee to be exempt as a bona fide "executive," all the following
27 criteria must be met and DEFENDANT has the burden of proving that:

- 28 (a) The employee's primary duty must be management of the enterprise, or of a
 customarily recognized department or subdivision; and,
- (b) The employee must customarily and regularly direct the work of at least two
 (2) or more other employees; and,

- 1 (c) The employee must have the authority to hire and fire, or to command
- 2 particularly serious attention to his or her recommendations on such actions
- 3 affecting other employees; and,
- 4 (d) The employee must customarily and regularly exercise discretion and
- 5 independent judgment; and,
- 6 (e) The employee must be primarily engaged in duties which meet the test of
- 7 exemption.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because
 9 they all fail to meet the requirements of being an "executive" within the meaning of the
 10 applicable Wage Order.

11 76. For an employee to be exempt as a bona fide "administrator," all of the
 12 following criteria must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee must perform office or non-manual work directly related to
- 14 management policies or general business operation of the employer; and,
- 15 (b) The employee must customarily and regularly exercise discretion and
- 16 independent judgment; and,
- 17 (c) The employee must regularly and directly assist a proprietor or an exempt
- 18 administrator; or,
- 19 (d) The employee must perform, under only general supervision, work requiring
- 20 special training, experience, or knowledge; or,
- 21 (e) The employee must execute special assignments and tasks under only general
- 22 supervision; and,
- 23 (f) The employee must be primarily engaged in duties which meet the test of
- 24 exemption.

25 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
 26 they all fail to meet the requirements for being an "administrator" under the applicable Wage
 27 Order.

28 77. The Industrial Welfare Commission, in Wage Order 4-2001, at section

1 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
 2 with to place an employee in the "professional" exempt category. For an employee to be
 3 exempt as a bona fide "professional," all the following criteria must be met and
 4 DEFENDANT has the burden of proving that:

- 5 (a) The employee is primarily engaged in an occupation commonly recognized as
 6 a learned or artistic profession. For the purposes of this subsection, "learned
 7 or artistic profession" means an employee who is primarily engaged in the
 8 performance of:
- 9 1) Work requiring knowledge of an advanced type in a field or science or
 10 learning customarily acquired by a prolonged course of specialized
 11 intellectual instruction and study, as distinguished from a general
 12 academic education and from an apprenticeship, and from training in
 13 the performance of routine mental, manual, or physical processes, or
 14 work that is an essential part or necessarily incident to any of the above
 15 work; or,
 - 16 2) Work that is original and creative in character in a recognized field of
 17 artistic endeavor, and the result of which depends primarily on the
 18 invention, imagination or talent of the employee or work that is an
 19 essential part of or incident to any of the above work; and,
 - 20 3) Whose work is predominately intellectual and varied in character (as
 21 opposed to routine mental, manual, mechanical, or physical work) and
 22 is of such character cannot be standardized in relation to a given period
 23 of time.
- 24 (b) The employee must customarily and regularly exercise discretion and
 25 independent judgment; and,
- 26 (c) The employee earns a monthly salary equivalent to no less than two (2) times
 27 the state minimum wage for full-time employment.

28 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because

1 they all fail to meet the requirements of being a "professional" within the meaning of the
2 applicable Wage Order.

3 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, do not fit the definition of an exempt executive, administrative, or professional
5 employee because:

- 6 (a) They did not work as executives or administrators; and,
7 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
8 members of the CALIFORNIA LABOR SUB-CLASS because they did not
9 meet all the applicable requirements to work under the professional exemption
10 for the reasons set forth above in this Complaint.

11 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, the PLAINTIFF,
12 and the other members of the CALIFORNIA LABOR SUB-CLASS, worked more than
13 eight (8) hours in a workday, forty (40) hours in a workweek, and/or worked on the seventh
14 (7th) consecutive day of a workweek.

15 80. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the
16 other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the
17 hours they have worked in excess of the maximum hours permissible by law as required by
18 Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of
19 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact
20 work, overtime hours.

21 81. By virtue of DEFENDANT's unlawful failure to pay additional compensation
22 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
23 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR
24 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts
25 which are presently unknown to them and which will be ascertained according to proof at
26 trial.

27 82. DEFENDANT knew or should have known that the PLAINTIFF, and the
28 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt

1 and DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
3 policy, practice and procedure.

4 83. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA
5 LABOR SUB-CLASS, request recovery of overtime compensation according to proof,
6 interest, costs, as well as the assessment of any statutory penalties against DEFENDANT, in
7 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime
8 compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-
9 CLASS who have terminated their employment, these employees would also be entitled to
10 waiting time penalties under Labor Code § 203, which penalties are sought herein. Further,
11 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are
12 entitled to seek and recover statutory costs.

13 84. In performing the acts and practices herein alleged in violation of labor laws
14 and refusing to provide the requisite overtime compensation, DEFENDANT acted and
15 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and
16 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious
17 and utter disregard of their legal rights, or the consequences to them, and with the despicable
18 intent of depriving them of their property and legal rights and otherwise causing them injury
19 in order to increase corporate profits at the expense of the PLAINTIFF and the members of
20 the CALIFORNIA LABOR SUB-CLASS.

21 22 **THIRD CAUSE OF ACTION**

23 **For Failure to Provide Accurate Itemized Statements**

24 **[Cal. Lab. Code § 226]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
26 **Defendants)**

27 85. PLAINTIFF, and the other members of the CALIFORNIA LABOR
28 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,

1 paragraphs 1 through 84 of this Complaint.

2 86. Cal. Labor Code § 226 provides that an employer must furnish employees
3 with an "accurate itemized" statement in writing showing:

4 (1) gross wages earned,

5 (2) total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of
7 overtime under subdivision (a) of Section 515 or any applicable order of the
8 Industrial Welfare Commission,

9 (3) the number of piecerate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis,

11 (4) all deductions, provided that all deductions made on written orders of the
12 employee may be aggregated and shown as one item,

13 (5) net wages earned,

14 (6) the inclusive dates of the period for which the employee is paid,

15 (7) the name of the employee and his or her social security number, except that by
16 January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on
18 the itemized statement,

19 (8) the name and address of the legal entity that is the employer, and

20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.

22 87. At all times relevant herein, DEFENDANT violated Labor Code § 226,
23 in that DEFENDANT failed to provide an accurate wage statement in writing that properly
24 and accurately itemized the number of hours worked by the PLAINTIFF, and the other
25 members of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay
26 and the effective overtime rates of pay.

27 88. DEFENDANT knowingly and intentionally failed to comply with Labor Code
28 § 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA
LABOR SUB-CLASS. These damages include, but are not limited to, costs expended

1 calculating the true hours worked and the amount of employment taxes which were not
 2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
 3 Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
 4 CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which
 5 the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to
 6 Labor Code § 226, in an amount according to proof at the time of trial (but in no event more
 7 than \$4,000.00 for the PLAINTIFF and each respective member of the CALIFORNIA
 8 LABOR SUB-CLASS herein).

10 **FOURTH CAUSE OF ACTION**

11 **For Failure to Pay Wages When Due**

12 **[Cal. Lab. Code § 203]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 14 **Defendants)**

15 89. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
 16 CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1
 17 through 88 of this Complaint.

18 90. Cal. Lab. Code § 200 provides that:

19 As used in this article:

20 (a) "Wages" includes all amounts for labor performed by
 21 employees of every description, whether the amount is fixed or
 22 ascertained by the standard of time, task, piece, Commission basis,
 23 or other method of calculation.

24 (b) "Labor" includes labor, work, or service whether rendered or
 25 performed under contract, subcontract, partnership, station plan, or
 26 other agreement if the labor to be paid for is performed personally
 27 by the person demanding payment.

28 91. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer
 discharges an employee, the wages earned and unpaid at the time of discharge are due and
 payable immediately."

92. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period
 quits his or her employment, his or her wages shall become due and

payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

93. There was no definite term in any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

94. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

95. The employment of many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

96. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a Class Action pursuant to California Code of Civil Procedure §

1 382;

2 B) An order requiring DEFENDANT to correctly calculate and pay all wages and
3 all sums unlawfully withheld from compensation due to the PLAINTIFF and
4 the other members of the CALIFORNIA CLASS;

5 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
6 fund for restitution of the sums incidental to DEFENDANT's violations due to
7 the PLAINTIFF and to the other members of the CALIFORNIA CLASS
8 according to proof; and,

9 D) An order temporarily, preliminarily, and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

11 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

12 A) That the Court certify the Second, Third, and Fourth Causes of Action asserted
13 by the CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to
14 California Code of Civil Procedure § 382;

15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for overtime compensation due to the PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
18 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
19 statutory rate;

20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
21 period in which a violation occurs and one hundred dollars (\$100) per each
22 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
23 subsequent pay period, not exceeding an aggregate penalty of four thousand
24 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
25 and,

26 D) The wages of all terminated employees from the CALIFORNIA LABOR
27 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
28 or until an action therefore is commenced, in accordance with Cal. Lab. Code

1 § 203.

2 3. On all claims:

- 3 A) An award of interest, including prejudgment interest at the legal rate;
- 4 B) Such other and further relief as the Court deems just and equitable; and,
- 5 C) An award of penalties and cost of suit, but neither this prayer nor any other
- 6 allegation or prayer in this Complaint is to be construed as a request, under any
- 7 circumstance, that would result in a request for attorneys' fees under Cal. Lab.
- 8 Code § 218.5.

9

10 Dated: January 11, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

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12 By: 

13 Norman B. Blumenthal
14 Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 11, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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